

FIRST REGULAR SESSION

# SENATE BILL NO. 1

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0489S.011

## AN ACT

To amend chapters 105 and 285, RSMo, by adding thereto two new sections relating to employee criminal background checks.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapters 105 and 285, RSMo, are amended by adding thereto  
2 two new sections, to be known as sections 105.003 and 285.028, to read as follows:

**105.003. 1. Prior to allowing any person to be hired for a full-  
2 time, part-time, or temporary position with substantial direct contact  
3 with children under the age of sixteen, a state department, agency,  
4 board, or commission shall request a criminal background check as  
5 provided in section 43.540, RSMo. As used in this section, the phrase  
6 "position with substantial direct contact with children" means any  
7 position where the employee is in the physical presence of or within  
8 close proximity to a child or children at least fifty percent of the time  
9 he or she is working. If an applicant has not resided in this state for  
10 five consecutive years prior to the date of his or her application for  
11 employment, the state department, agency, board, or commission shall  
12 request a nationwide check for the purpose of determining if the  
13 applicant has a prior criminal history in other states. The fingerprint  
14 cards and any required fees shall be sent to the highway patrol's  
15 criminal records division. The first set of fingerprints shall be used for  
16 searching the state repository of criminal history information. If no  
17 identification is made, the second set of fingerprints shall be forwarded  
18 to the Federal Bureau of Investigation, Identification Division, for the  
19 searching of the federal criminal history files. The patrol shall notify  
20 the submitting state department, agency, board, or commission of any  
21 criminal history information or lack of criminal history information**

22 discovered on the individual. Notwithstanding the provisions of section  
23 610.120, RSMo, all records related to any criminal history information  
24 discovered shall be accessible and available to the state department,  
25 agency, board, or commission making the record request. In the case  
26 of temporary employees hired through or contracted with an  
27 employment agency, the employment agency shall be subject to the  
28 provisions of this section prior to sending the employee to a state  
29 department, agency, board, or commission.

30 2. When a state department, agency, board, or commission  
31 requests a criminal background check under section 43.540, RSMo, it  
32 may require the applicant to reimburse the state department, agency,  
33 board, or commission for the cost of such record check. When a state  
34 department, agency, board, or commission requests a nationwide  
35 criminal background check under subsection 1 of this section, the total  
36 cost shall be paid by the state department, agency, board, or  
37 commission. The obligation of a state department, agency, board, or  
38 commission to obtain a nationwide criminal background check shall be  
39 subject to the availability of appropriations.

40 3. An applicant for a position with substantial direct contact  
41 with children less than sixteen years of age shall:

42 (1) Sign a consent form as required by section 43.540, RSMo, so  
43 the state department, agency, board, or commission may request a  
44 criminal records review; and

45 (2) Disclose the applicant's criminal history. For the purposes  
46 of this subdivision, "criminal history" includes any conviction or a plea  
47 of guilty to a misdemeanor or felony charge and shall include any  
48 suspended imposition of sentence, any suspended execution of sentence  
49 or any period of probation or parole.

50 4. A state department, agency, board, or commission shall not  
51 hire any individual for a position with substantial direct contact with  
52 children less than sixteen years of age, who has pleaded guilty to or  
53 been found guilty of any offense for which a person is required to  
54 register as a sexual offender under sections 589.400 to 589.425, RSMo,  
55 or any offense of a similar nature established under the laws of any  
56 other state or of the United States, or any other country, whether or  
57 not the sentence is imposed.

58 5. A state department, agency, board, or commission shall be

59 prohibited from hiring an applicant who fails to disclose his or her  
60 criminal history as required by subsection 3 of this section.

285.028. 1. Prior to allowing any person to be hired for a full-  
2 time, part-time or temporary position with substantial direct contact  
3 with children under the age of sixteen, an employer with more than ten  
4 full- or part-time employees shall request a criminal background check  
5 as provided in section 43.540, RSMo. As used in this section, the phrase  
6 "position with substantial direct contact with children" means any  
7 position where the employee is in the physical presence of or within  
8 close proximity to a child or children at least fifty percent of the time  
9 he or she is working. If an applicant has not resided in this state for  
10 five consecutive years prior to the date of his or her application for  
11 employment, the employer shall request a nationwide check for the  
12 purpose of determining if the applicant has a prior criminal history in  
13 other states. The fingerprint cards and any required fees shall be sent  
14 to the highway patrol's criminal records division. The first set of  
15 fingerprints shall be used for searching the state repository of criminal  
16 history information. If no identification is made, the second set of  
17 fingerprints shall be forwarded to the Federal Bureau of Investigation,  
18 Identification Division, for the searching of the federal criminal history  
19 files. The patrol shall notify the submitting employer of any criminal  
20 history information or lack of criminal history information discovered  
21 on the individual. Notwithstanding the provisions of section 610.120,  
22 RSMo, all records related to any criminal history information  
23 discovered shall be accessible and available to the employer making the  
24 record request. In the case of temporary employees hired through or  
25 contracted with an employment agency, the employment agency shall  
26 be subject to the provisions of this section prior to sending the  
27 employee to the employer.

28 2. When an employer with more than ten employees requests a  
29 criminal background check under section 43.540, RSMo, or a  
30 nationwide criminal background check, it may require the applicant to  
31 reimburse the employer for the cost of such record check.

32 3. An applicant for a position with substantial direct contact  
33 with children less than sixteen years of age shall:

34 (1) Sign a consent form as required by section 43.540, RSMo, so  
35 the employer may request a criminal records review; and

36           **(2) Disclose the applicant's criminal history. For the purposes**  
37 **of this subdivision "criminal history" includes any conviction or a plea**  
38 **of guilty to a misdemeanor or felony charge and shall include any**  
39 **suspended imposition of sentence, any suspended execution of sentence**  
40 **or any period of probation or parole.**

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